

Inspector General

United States
Department *of* Defense



Contract Management of Joint Logistics Integrator
Services in Support of Mine Resistant Ambush
Protected Vehicles Needs Improvement

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Acronyms and Abbreviations

| | |
|------|--|
| ACC | Army Contracting Command |
| AFSB | Army Field Support Brigade |
| BPA | Blanket Purchase Agreement |
| COR | Contracting Officer's Representative |
| D&F | Determination and Findings |
| FAR | Federal Acquisition Regulation |
| GSA | General Services Administration |
| JLI | Joint Logistics Integrator |
| JPO | Joint Program Office |
| MCSC | Marine Corps Systems Command |
| MRAP | Mine Resistant Ambush Protected |
| RRAD | Red River Army Depot |
| RSA | Regional Support Activity |
| SAIC | Science Applications International Corporation |
| SOP | Standard Operating Procedure |
| SOW | Statement of Work |
| T&M | Time-and-Materials |



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

July 11, 2011

MEMORANDUM FOR NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
COMMANDER, MARINE CORPS SYSTEMS COMMAND

SUBJECT: Contract Management of Joint Logistics Integrator Services in Support of
Mine Resistant Ambush Protected Vehicles Needs Improvement
(Report No. D-2011-081)

We are providing this report for your information and use. We identified a contractor with organizational conflicts of interest performing inherently governmental functions on a Joint Logistics Integrator services contract for Mine Resistant Ambush Protected vehicles. We considered management comments on a draft of this report when preparing the final report.

The comments from the Commander, Marine Corps System Command, and the Executive Director, Army Contracting Command-Warren, conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9071 (DSN 664-9071).

A handwritten signature in dark ink, appearing to read "Bruce A. Burton", is positioned above the printed name.

Bruce A. Burton
Deputy Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Contract Management of Joint Logistics Integrator Services in Support of Mine Resistant Ambush Protected Vehicles Needs Improvement

What We Did

This is the third report in a series on maintenance support contracts for Mine Resistant Ambush Protected (MRAP) vehicles. We reviewed and evaluated the Army's award and administration of the Joint Logistics Integrator (JLI) contracts. The initial contract, awarded in 2007, was valued at \$193.4 million, and the follow-on contract, awarded in 2009, was valued at \$285.5 million.

What We Found

Army Contracting Command (ACC)-Warren and Joint Program Office (JPO) MRAP officials (the officials) inadequately planned for the follow-on contract award and did not effectively administer the contract. The officials inappropriately allowed the contractor to perform inherently governmental functions, such as disciplining DoD employees, and to have organizational conflicts of interest, such as helping prepare requirements for the follow-on contract that the contractor bid on and won. This occurred because the officials only cursorily addressed statutory and regulatory requirements for preventing performance of inherently governmental functions and organizational conflict of interests, and only one Government employee was assigned overseas to the task of overseeing a multimillion dollar contract in three different foreign countries. This greatly increased the risk for potential waste or abuse on the contract.

In addition, the contracting officer did not adequately support the need to use a time-and-material type of contract for the follow-on JLI effort, valued at \$285.5 million. ACC-Warren officials did not use data from the initial contract to help structure appropriate portions of the contract as fixed price. This occurred because ACC-

Warren officials stated that they could not estimate the extent or duration of the work needed due to constant changes in mission need and work performed. Consequently, the contracting officer awarded a contract type which provides no incentive to the contractor for cost control or labor efficiency and significantly increased risk to DoD.

What We Recommend

The Commander, Marine Corps Systems Command, needs to require JPO MRAP officials to obtain training on inherently governmental functions and organizational conflicts of interest requirements. The Program Manager, JPO MRAP, needs to issue guidance to ensure that future JLI services do not include the performance of inherently governmental functions. The Executive Director, ACC-Warren, needs to require that contracting officials obtain training on inherently governmental functions and organizational conflicts of interest requirements, needs to review the contracting officers' performance, and establish a process that will gather and analyze data from the JLI follow-on contract so that tasks can be converted to fixed-price work where appropriate.

Management Comments and Our Response

The Commander, Marine Corps Systems Command—who also responded on behalf of the Program Manager, JPO MRAP—and the Executive Director, ACC-Warren through Army Materiel Command, agreed with our recommendations. The comments are responsive to the intent of the recommendations. Please see the recommendations table on the back of this page.

Recommendations Table

| Management | Recommendations Requiring Comment | No Additional Comments Required |
|--|--|--|
| Commander, Marine Corps Systems Command | | A.1 |
| Program Manager, Joint Program Office, Mine Resistant Ambush Protected Vehicle Program | | A.2 |
| Executive Director, Army Contracting Command-Warren | | A.3, B |
| TACOM Principal Assistant Responsible for Contracting | | A.4 |

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Introduction

Audit Objectives

The overall objective was to determine whether the Mine Resistant Ambush Protected (MRAP) vehicle program and contracting officials were adequately supporting the MRAP vehicle maintenance requirements and appropriately awarding and administering maintenance contracts. This is the third in a series of reports addressing the maintenance support for MRAP vehicles. The first report addressed field service representative and instructor services procured to support MRAP vehicle maintenance.¹ The second report addressed the award of the instructor services contract to TJ FIG.² For this report, we limited our scope to the Joint Logistics Integrator (JLI) contracts awarded to Science Applications International Corporation (SAIC) and Jacobs Technology. See Appendix A for a discussion of the audit scope and methodology, and prior coverage.

We performed this audit pursuant to Public Law 110-181, “The National Defense Authorization Act for Fiscal Year 2008,” section 842, “Investigation of Waste, Fraud, and Abuse in Wartime Contracts and Contracting Processes in Iraq and Afghanistan,” January 28, 2008. Section 842 requires:

thorough audits...to identify potential waste, fraud, and abuse in the performance of (1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and (2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.

We reviewed two contracts: the first contract was awarded to Jacobs Technology and subcontracted to SAIC, and the second contract was awarded to SAIC for JLI services to support the Joint Program Office (JPO) MRAP program (JPO MRAP). We visited Southwest Asia to meet with Government and contractor personnel to discuss their role in supporting JPO MRAP.

Background

MRAP vehicles are multi-mission platforms capable of mitigating the effects of improvised explosive devices, mines, and small arms fire (see Figure 1 for an example of an MRAP vehicle). In November 2006, JPO MRAP was established to manage the acquisition of MRAP vehicles to meet the needs of all of the Services. Marine Corps Systems Command (MCSC) manages JPO MRAP.

On May 2, 2007, the Secretary of Defense designated the MRAP program as the highest priority DoD acquisition program and stated that all options to accelerate the production

¹ DoD IG Report No. D-2010-068, “Government Oversight of Field Service Representative and Instructor Services in Support of the Mine Resistant Ambush Protected Vehicle Program,” June 17, 2010

² DoD IG Report No. D-2011-036, “Competition Should be Used for Instructor Services for the Mine Resistant Ambush Protected Vehicles,” February 3, 2011

and fielding of the MRAP capability to the theater should be identified, assessed, and applied where feasible. To reduce the burden on units receiving MRAP vehicles, JPO MRAP established a forward presence in Iraq, Afghanistan, Qatar, and Kuwait. According to the Joint Supportability Plan, the JPO MRAP Forward includes personnel from the JPO, JLI, and MRAP vehicle original equipment manufacturers to form an integrated team to stand-up, coordinate, and execute JPO MRAP operations in theater.

Figure 1. Cougar H 4×4 Mine Resistant Ambush Protected Vehicle on the Off-Road Course at Camp Taqaddum, Iraq



Source: DefenseImagery.mil

Joint Logistics Integrator Support

The JPO MRAP requires JLI support that includes the following broad categories:

- maintenance,
- parts inventory control management,
- battle damage assessment and repair,
- de-processing and warranty spares management,
- integrated logistics support,
- joint logistics operations,
- fielding services,
- theater personnel management,
- configuration management,
- transportation, and
- logistics analyses.

According to the Joint Supportability Plan, JLI support provides an operational view of all theater logistics efforts associated with the MRAP vehicle program, including oversight and management of fielding, training, and sustainment operations. Additionally, JLI support provides the JPO MRAP Forward with the capability to perform logistics engineering analysis and provides insight into MRAP vehicle fleet readiness and sustainment.

The JLI support also includes development and execution of standard operating procedures (SOPs) for all functions of fielding, including reception, de-processing, inventory management, storage, maintenance inspection, hand-off, and postfielding support; recommendation of changes to existing logistics documentation based on lessons learned and proven processes; and collection and management of documents and data for the JPO MRAP.

Contracts Awarded for Joint Logistics Integrator Effort

On November 30, 2007, Army Contracting Command (ACC)-Warren³ officials awarded contract W56HZV-04-A-0005, delivery order 0256—the initial JLI effort (JLI 01)—to Jacobs Technology.⁴ The period of performance was from December 3, 2007, through June 10, 2009, and the total value of the contract was \$193.4 million. On May 4, 2009, ACC-Warren officials awarded contract W56HZV-09-A-0003, delivery order 0001 (JLI 02), to SAIC for continued MRAP JLI services. The period of performance extended from May 4, 2009, through May 3, 2011, and the total value of the contract was \$285.5 million.

ACC-Warren awarded both JLI contracts against blanket purchase agreements (BPAs) as time-and-materials (T&M) contracts. The JLI contracts used labor categories and rates from General Services Administration (GSA) multiple award schedule contracts.

Internal Controls Require Management Attention for Joint Logistics Integrator Services

DoD Instruction 5010.40, “Managers’ Internal Control Program Procedures,” July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses in the award and administration of the JLI contracts. Specifically, JPO MRAP and ACC-Warren officials allowed the contractor to perform inherently governmental functions and to have organizational conflicts of interest while performing the JLI functions. Furthermore, the contracting officer did not adequately support the decision to award a T&M contract type for procuring JLI services. We will provide a copy of the report to the senior official responsible for internal controls in the JPO MRAP and ACC-Warren.

³ The TACOM Contracting Center was redesignated as the Army Contracting Command-Warren on January 19, 2011.

⁴ Jacobs Technology was previously known as Sverdrup Technology.

Finding A. Contractor Performance Included Inherently Governmental Functions and Posed Organizational Conflicts of Interest

Contracting officers at ACC-Warren and JPO MRAP senior managers (the officials) allowed the JLI support contractor to exert controls over functions that should have remained under the authority of DoD. The officials inappropriately allowed the contractor to direct DoD personnel, participate in disciplinary actions of DoD personnel, prepare and sign SOPs, and participate in other situations where contractor employees could be assumed to be DoD employees or representatives. In addition, the officials allowed the contractor to have organizational conflicts of interest, such as participating in the preparation of the requirements for the contract that was subsequently awarded to the contractor and monitoring its own performance. This occurred because the officials only cursorily addressed statutory and regulatory requirements for preventing performance of inherently governmental functions and organizational conflicts of interest, and only one Government employee was assigned overseas to the task of overseeing a multimillion dollar contract in three different foreign countries. As a result, the officials increased the risk for potential waste or abuse on the contract and did not ensure that the contract for JLI services, valued at \$285.5 million, was in the best interest of DoD.

Criteria

Public Law 108-375, “The National Defense Authorization Act for Fiscal Year 2005,” section 804, “Contractor Performance of Acquisition Functions Closely Associated with Inherently Governmental Functions,” October 28, 2004 (the law), amended section 2382, title 10, United States Code, by placing restrictions on the head of an agency when entering into a contract for the performance of acquisition functions closely related to inherently governmental functions. The law also states that in order for an agency to enter into such a contract, the contracting officer must address any potential organizational conflicts of interest in the performance of the functions under the contract. Further, the law refers to the Federal Acquisition Regulation (FAR) for additional guidance.

FAR subpart 2.1 defines an inherently governmental function as a function that is so intimately related to public interest as to mandate performance by Government employees. These functions include activities that require either the exercise of discretion in applying Government authority or the making of value judgments in decisions for the Government.

FAR subpart 7.1, “Acquisition Plans,” includes guidance to prevent the Government from entering into contracts for inherently governmental functions. Specifically, FAR 7.103, “Agency-Head Responsibilities,” states that the agency head or a designee must prescribe procedures for ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor

and that all contracts or orders are adequately managed to ensure effective official control over contracts.

FAR subpart 7.5, “Inherently Governmental Functions,” forbids the use of contracts for the performance of inherently governmental functions and provides examples of functions to be treated as inherently governmental; one of which is the direction and control of Federal employees. In addition, some functions, while not considered to be inherently governmental, may approach being inherently governmental due to their nature, or the manner in which the contractor performs the contract. FAR 7.503 provides 19 examples of functions that may approach being inherently governmental, 2 of which being contractors providing assistance in the development of the statement of work (SOW) and contractors participating in any situation where it might be assumed that they are agency employees or representatives.

FAR subpart 2.1 defines organizational conflicts of interest as situations which arise where, because of activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in forming the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

FAR subpart 9.5 directs contracting officers to take measures to detect and avoid actual and potential organizational conflicts of interest. Specifically, FAR 9.504, “Contracting Officer Responsibilities,” requires the contracting officer to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible and avoid, neutralize, or mitigate significant potential conflicts before contract award. In addition, FAR 9.505 states that the exercise of common sense, good judgment, and sound discretion is required in the decision of whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are preventing unfair competitive advantage and preventing the existence of conflicting roles that might bias a contractor’s judgment.

Also, FAR 9.505-2 (b)(1) states that if a contractor assists in preparing a work statement to be used in competitively acquiring a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply major components of the system, or the services unless (a) it is the sole source, (b) it has participated in the development and design work, or (c) more than one contractor has been involved in preparing the work statement. In addition, FAR 9.505-2(b)(2) states that when contractor assistance is necessary for the preparation of work statements, the contractor might often be in a position to favor its own products or capabilities. The FAR specifically states that to overcome the possibility of bias, contractors are prohibited from supplying a system or services acquired on the basis of work statements growing out of their services, unless excepted in FAR 9.505-2 (b)(1).

Contractor Performance of Inherently Governmental Functions

The officials allowed the contractor to perform inherently governmental functions, such as directing Government personnel, participating in disciplinary actions of government personnel, and issuing SOPs that covered Government personnel and activities. In addition, the officials allowed the contractor to perform functions that were closely associated with inherently governmental functions. Appendix B contains more examples of inherently governmental functions performed by SAIC personnel.

Direction of Government Personnel

Contractor personnel directed Government personnel in Iraq. On one occasion, the Red River Army Depot (RRAD) Liaison Officer (Government employee) was directed to report to the Assistant Program Manager, JPO MRAP Forward, Operation Iraqi Freedom (contractor employee), rather than to the Program Manager, JPO MRAP Forward (Government employee). In an e-mail to the program manager, the assistant program manager (contractor employee) stated that he and the site leads must be perceived as in charge of the MRAP vehicle program. The assistant program manager implied that he was part of the recognized chain of command and that the program manager should not issue orders to the RRAD Liaison Officer, thereby circumventing the assistant program manager's authority. The assistant program manager advised the program manager that the RRAD Liaison Officer could ask the program manager for approval on select items as long as the program manager did not issue instructions directly to the RRAD Liaison Officer. By making such statements to the program manager, the assistant program manager directed a DoD employee, which should have been done only by DoD personnel.

The assistant program manager (contractor employee) stated that he and the site leads must be perceived as in charge of the MRAP vehicle program.

In another instance, the Assistant Program Manager, JPO MRAP Forward, Operation Iraqi Freedom, communicated to various DoD officials, including the 402nd Army Field Support Brigade (AFSB)⁵ battalion commander, that DoD personnel were not to contact the battalion commander directly but were to address all RRAD actions to the assistant program manager. This further demonstrates how the assistant program manager exerted control over DoD personnel.

Contractor Involvement in Government Disciplinary Actions

The Assistant Program Manager, JPO MRAP Forward, Operation Iraqi Freedom (contractor employee) was involved in the disciplinary actions involving DoD personnel. In an e-mail, the RRAD Liaison Officer (Government employee) referred to the battalion

⁵ The 402nd AFSB is the largest brigade in Iraq. Its mission is to integrate acquisition, logistics, and technology for Army Materiel Command, to protect, equip, and sustain joint/coalition forces in support of Operation Iraqi Freedom. One of the 402nd AFSB's efforts is soldier survivability, which involves MRAP training and sustainment operations.

commander for direction concerning an incident involving a DoD employee. The battalion commander requested the Assistant Program Manager, JPO MRAP Forward, Operation Iraqi Freedom (contractor employee) and the Taji Regional Support Activity (RSA) site lead (Government employee) to recommend whether the employee should receive a letter of reprimand. The battalion commander stated that he would support their decision, which was to pursue a letter of reprimand. The assistant program manager asked the Taji RSA site lead to draft a letter of reprimand, which the assistant program manager would then review. The assistant program manager e-mailed the battalion commander and RRAD Liaison Officer to apprise them of this action. Although the battalion commander had requested the assistant program manager's recommendation, it was not appropriate for the assistant program manager to make recommendations concerning a DoD employee.

We discussed the assistant program manager's involvement in the disciplinary actions with the 402nd AFSB commander, the ultimate decision authority. The commander stated that AFSB personnel were reviewing the contractor's disciplinary actions and recognized that the assistant program manager had acted inappropriately and should not have been involved in the disciplinary matters. The commander also stated the 402nd AFSB has since restructured the chain of command for disciplinary actions toward DoD personnel.

Contractor Signed Standard Operating Procedures

Contractor employees prepared and signed various SOPs, which directed DoD personnel, for the MRAP vehicle program. The Deputy Program Manager, JPO MRAP Forward (contractor employee) signed the SOP for JPO MRAP Forward Operation Iraqi Freedom. The SOP stated that the procedures contained within the document specified in writing what should be done, how it should be done, when it was to be done, and where and by whom the procedures should be done. The deputy program manager also signed the SOP for Sustainment Operations and Material Management Operations for the JPO MRAP Forward. This SOP provided procedures on management oversight in the maintenance and sustainment operations of all RSAs for the MRAP vehicle program. In addition, the Assistant Program Manager, JPO MRAP Forward, Operation Iraqi Freedom (contractor employee) signed the External SOP for the Operation Iraqi Freedom RSAs on behalf of the Program Manager, JPO MRAP Forward (Government employee). This SOP provided procedures on maintenance and equipment support to Multi-National Corps – Iraq units. Specifically, it provided guidelines for turn-in and receipt of equipment for all RSAs and guidelines for functions that must be performed by RSA site leads (Government personnel). Although a contractor may assist in preparing SOPs concerning DoD operations, they should not sign the SOPs on behalf of DoD officials. The contract specifically stated that:

No Contractor employee shall hold him or herself out to be a Government employee, agent, or representative. *No Contractor employee shall* state orally or in writing at any time that he or she is acting on behalf of the Government. [emphasis added]

By signing the SOPs, contractor employees appeared to be directing the day-to-day operations of DoD personnel involved in the JPO MRAP Forward. The officials stated that if sufficient Government personnel had been available at the time, they could have

developed the SOPs. While we agree that the lack of Government personnel would explain the contractor employees developing the SOPs, it does not provide a sufficient rationale for the program manager not to sign the SOPs.

Closely Associated Inherently Governmental Functions

The contractor also performed functions that FAR 7.503 lists as approaching inherently governmental, such as participating in the development of the SOW and situations where contractor employees may be assumed to be DoD employees or representatives. For example, on December 7, 2009, the audit team met with the ACC-Warren Chief of Armaments Contracting Group, contracting officer, and contracting specialist, where the contracting specialist stated that the contractor and JPO MRAP officials worked together to prepare the contract requirements for the JLI 02 SOW and the contracting officer agreed. Furthermore, on December 7, 2009, we asked the Product Manager for Logistics and Sustainment, JPO MRAP, about the contractor's involvement in the preparation of the SOW and he confirmed that JPO MRAP officials discussed the contract requirements in the SOW with the contractor. Therefore, contractor personnel participated in the preparation of the requirements for the contract that they bid on and were awarded.

In addition, contractor employees were involved in situations where they might be assumed to be DoD employees or representatives. On many occasions, contractor employees gave direction on behalf of the Program Manager, JPO MRAP Forward (Government employee). According to documentation obtained, the Assistant Program Manager, JPO MRAP Forward, Operation Iraqi Freedom (contractor employee) stated that contractor employees "are empowered to coordinate actions across the JPO

The assistant program manager obtained a Government employee's Leave and Earnings Statement, to provide input to Government officials on decisions for promotion on behalf of the program manager.

[Forward, Operation Iraqi Freedom] on behalf of" the program manager. As stated previously, the contract specifically prohibited the contractor from acting on behalf of the Government. In addition to using the phrase "on behalf of" the program manager when directing SAIC employees, the assistant program manager used the same phrase when providing direction and approval over DoD personnel. For instance, the assistant program

manager approved relocation and increased the requirements of RRAD personnel on behalf of the program manager. In another instance, the assistant program manager obtained a Government employee's Leave and Earnings Statement to provide input to Government officials on decisions for promotion on behalf of the program manager. Furthermore, in Kuwait, the Deputy Program Manager, JPO MRAP Forward (contractor employee) stated that he used the phrase "on behalf of" the program manager when executing events that occurred regularly, such as informing Government employees to correct actions and follow proper standards. The deputy program manager stated that employees could not differentiate between a Government employee and a contractor employee.

By assisting in the development of the requirements for the JLI 02 contract that was awarded to the contractor and participating in situations where contractor employees may

be assumed to be DoD personnel, contractor employees performed closely associated inherently governmental functions, as described in the FAR. The closer these contract services come to approaching inherently governmental functions, the greater the risk of the contractor influencing DoD decisions based on the contractor's work, which has the potential of resulting in decisions that are not in the best interest of the DoD.

Contractor Performance Posed Organizational Conflicts of Interest

The officials allowed the contractor to have organizational conflicts of interest while performing JLI functions. First, the contractor provided input on the JLI requirements for the JLI 02 SOW while working as a subcontractor under the JLI 01 contract. Second, the contractor was responsible for monitoring the MRAP program, including management and logistics areas, while providing maintenance services. The contractor's performance of these functions violates the two underlying principles in the acquisition process: preventing unfair competitive advantage and preventing the existence of conflicting roles that might bias a contractor's judgment.

Potential Competitive Advantage

The contractor provided input on JLI requirements for the SOW of the JLI 02 contract, which was subsequently awarded to the contractor. Specifically, while providing services under the JLI 01 contract, the contractor worked with JPO MRAP officials to develop requirements for the JLI 02 contract. These requirements were included in the solicitation of the JLI 02 BPA for the acquisition of JLI and Operational Readiness Services for JPO MRAP. The solicitation of the JLI 02 BPA stated that the JLI SOW was the major portion of the effort and referred to an attachment that was the draft SOW for the JLI 02 contract.⁶ FAR 9.505-2(b)(1) and (2) forbid contractors who assist in preparing work statements from providing those services to the Government as the contractor may be biased to favor its own products or capabilities, unless the contractor is the sole source, the contractor has participated in the development and design work, or more than one contractor has been involved in preparing the work statement.

While providing services under the JLI 01 contract, the contractor worked with JPO MRAP officials to develop requirements for the JLI 02 contract.

The JLI 02 BPA acquisition process did not meet the exceptions specified in FAR 9.505-2(b)(1). First, the JLI 02 BPA was solicited through the GSA Schedule Program; BPAs and orders placed against contracts awarded by GSA are considered to be issued using full and open competition. Second, the GSA Schedule Program provides a simplified process for obtaining commercial services, that is, services that can be offered

⁶ Almost all of the requirements stated in the draft JLI 02 SOW (an attachment in the solicitation of the JLI 02 BPA) were included in the actual JLI 02 SOW that was used for the award of the JLI 02 contract. Although the actual JLI 02 SOW had additional requirements, 80 of 84 sections of the requirements stated in the draft JLI 02 SOW and the actual JLI 02 SOW were verbatim. Therefore, we concluded that the contractor provided input that was included in the solicitation of the JLI 02 BPA.

and sold competitively in the commercial marketplace based on market prices for specific tasks and under standard commercial terms and conditions. The JLI 02 BPA was solicited for commercial services, which by definition, would not require development and design work. Third, only one contractor was involved in the preparation of the work statement.

The JPO MRAP may have provided the contractor an unfair competitive advantage in the solicitation process for the JLI 02 BPA by allowing the contractor to provide input on requirements. Although the JLI 02 BPA was considered a competitive award, the contractor was the only bidder for the contract. The fact that the contractor participated in developing the requirements could have skewed the competition in favor of itself, intentionally or not. Consequently, the Government may have increased its risk of not getting the best value for JLI services.

The JPO MRAP may have provided the contractor an unfair competitive advantage in the solicitation process for the JLI 02 BPA by allowing the contractor to provide input on requirements.

Conflicting Roles

Contractor employees monitored their own performance while executing the JLI 02 contract. The JLI 02 SOW required the contractor to perform maintenance services and at the same time manage theater personnel. Specifically, the SOW for the JLI 02 contract stated:

The JLI portion of this effort includes *logistics and engineering services* as well as services for *JPOs oversight and management* . . . Additionally, the JLI will . . . provide timely insight into *MRAP fleet readiness and sustainment* . . . This SOW establishes requirements for Contractor services to include *managerial reporting, problem discovery/resolution, and the execution of necessary actions to assure MRAP field readiness* for the soldier in the most immediate cost effective manner as possible. Services will be provided in the following broad categories of *Maintenance Services*, Parts Inventory and Warehousing . . . , Parts Procurement, Integrated Logistics Support, Joint Logistics Operations, Fielding Services, Training Services, *Theater Personnel Management*, . . . Data Management, Transportation, and various Logistics Analyses. . . Contractor logistic services are to sustain JPO MRAP managed vehicles, equipment, and subordinate sub-systems. [emphasis added]

According to the SOW, contractor employees were to provide transportation, de-processing, fielding, sustainment, and component repair, as well as data collection and analysis on MRAP logistic activities as part of the JLI requirement for Kuwait and Iraq. By contracting for services to provide MRAP vehicle program analysis and oversight, along with maintenance of the MRAP vehicles to the same contractor, the contracting officer placed the Government in a situation where organizational conflicts of interest may occur.

For example, a contractor employee provided advice to JPO MRAP officials regarding personnel requirements and subsequently the number of Government personnel performing sustainment maintenance decreased, while the number of contractor employees providing sustainment maintenance increased. The Deputy Program

Manager, JPO MRAP Forward (contractor employee) stated that he provided recommendations of personnel needs to the Program Manager, JPO MRAP Forward

Because the JLI contract allowed the contractor to perform maintenance services while also monitoring the program, any recommendation concerning the number and type of personnel may have been skewed to generate a larger requirement for contractor employees.

(Government employee) based on mission requirements from the Army and the Marine Corps. The deputy program manager stated that the MRAP Vehicle Sustainment Facility initially required 109 RRAD mechanics; however, he also stated that, due to several disciplinary issues with Government personnel, the requirement decreased to 60 personnel, resulting in the removal of 49 Government mechanic positions. On the other hand, the requirement for the contractor's

mechanics increased by 40. Because the JLI contract allowed the contractor to perform maintenance services while also monitoring the program, any recommendation concerning the number and type of personnel may have been skewed to generate a larger requirement for contractor employees. Thus, contractor employees may have been unable to render impartial services, as illustrated in this example. In addition, in Appendix C, we describe a situation where the contractor duplicated the efforts of Government personnel, which may have been the result of the contractor's dual role of providing program analysis and oversight while providing maintenance services.

Inherently Governmental Functions and Organizational Conflicts of Interest Guidance Was Not Followed

The FAR prescribes procedures for the officials to preclude the contractor from performing inherently governmental functions and to avoid and mitigate possible organizational conflicts of interest when awarding contracts. However, the officials did not follow FAR guidance to prevent the contractor from performing inherently governmental functions and having organizational conflicts of interest.

Performance of Inherently Governmental Functions Was Not Prevented

The officials did not adequately prevent the contractor from performing inherently governmental functions. Although the contract specifically states that the contractor "shall not perform any inherently Government actions," as we have discussed previously, the contractor performed functions that should have been performed by Government personnel. As stated in FAR 7.103, the agency head or designee had to ensure that the requirements of the contract did not result in the performance of inherently governmental functions. In addition, the Army Federal Acquisition Regulation Supplement 5107.503, "Policy," requires the officials to use the "Request for Services Contract Approval" form, dated June 17, 2009. This form includes a checklist for functions that are identified as inherently governmental, closely associated with inherently governmental, and personal services.

We asked the Deputy Product Manager for Logistics, JPO MRAP (Government employee) what procedures were used to ensure the requirements in the SOW would not

result in inherently governmental functions. He stated that a legal review was conducted before contract award, in which the appropriateness of contract requirements was identified, to ensure that the requirements would not result in inherently governmental functions. According to the contracting officer, the JPO MRAP officials submitted three worksheets, along with the Request for Services Contract Approval, to the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) for approval of the contract award. These worksheets included inherently governmental and closely associated with inherently governmental functions checklists, which were similar to the Request for Services Contract Approval checklist from June 17, 2009.⁷ The worksheets asserted that there were no inherently governmental functions or closely associated with inherently governmental functions required for this contract. However, as noted in FAR subpart 2.1, the “inherently governmental function” definition is a policy determination, not a legal determination, and our audit found that contractor personnel performed inherently governmental and closely associated with inherently governmental functions.

Had there been adequate surveillance, Government officials may have prevented contractor employees from performing functions that were inherently governmental.

In addition, the officials did not provide sufficient Government surveillance, which is fundamental in contracts that include a contractor’s performance of functions that are closely associated with inherently governmental functions. Had there been adequate surveillance, Government officials may have prevented contractor employees from performing functions that were inherently governmental. See Finding B for discussion on insufficient Government surveillance.

Agencies are responsible for ensuring that the performance of inherently governmental functions is addressed before issuing a solicitation. It is also essential that after the award of a contract, agencies take steps to protect public interest by playing an active and informed role in contract administration, which ensures that Government policies are implemented. Such participation should be appropriate to the nature of the contract and should leave no doubt that the contract is under the control of Government officials.

Potential or Actual Organizational Conflicts of Interest Were Not Assessed

The contractor’s performance as the JLI posed organizational conflicts of interest because the contracting officer did not assess the SOW for the JLI 02 contract to identify whether an actual or potential organizational conflict of interest existed before contract award, as required by FAR 9.504. The contracting officer left the responsibility of assessing organizational conflict of interest to the contractor. The BPA for the JLI 02 contract stated that the contractor must warrant that there were no relevant facts or circumstances

⁷ At the time of the contract award, a previous version of the checklist, dated August 8, 2008, was used. Both checklists contain similar items for inherently governmental and closely associated inherently governmental functions.

to indicate an organizational conflict of interest and that if an actual or potential organizational conflict of interest was discovered after contract award, the contractor had the responsibility to notify the contracting officer of the potential conflict, recommend an alternate tasking approach that would avoid the potential conflict, and present a conflict of interest mitigation plan to the Government.

The contracting officer obtained the contractor's assessment for organizational conflicts of interest. According to the contractor's assessment, the SAIC Vice President/Business Unit Contracts Director warranted that to the best of his knowledge there were no relevant facts or circumstances that could have created organizational conflicts of

The contracting officer left the responsibility of assessing organizational conflicts of interest to the contractor.

interest. The contractor did not identify current conflicts for the BPA and stated that the contractor ensured the contract would not create a future conflict of work. The contracting officer could provide only the contractor's assessment of

organizational conflicts of interest as support for an organizational conflict of interest assessment. Further, during a meeting with the ACC-Warren Chief of Armaments Contracting Group, contracting officer, and contracting specialist on December 7, 2009, the contracting officer stated that ACC-Warren officials did not assess the JLI 02 contract for organizational conflicts of interest; however, they were in the process of assessing organizational conflicts of interest on new procurements. Ultimately, it is the contracting officer's responsibility to assess organizational conflicts of interest, according to FAR 9.504; however, the contracting officer relied solely on the contractor to assess the SOW to identify potential or actual organizational conflicts of interest.

Joint Program Office MRAP Forward Organizational Structure

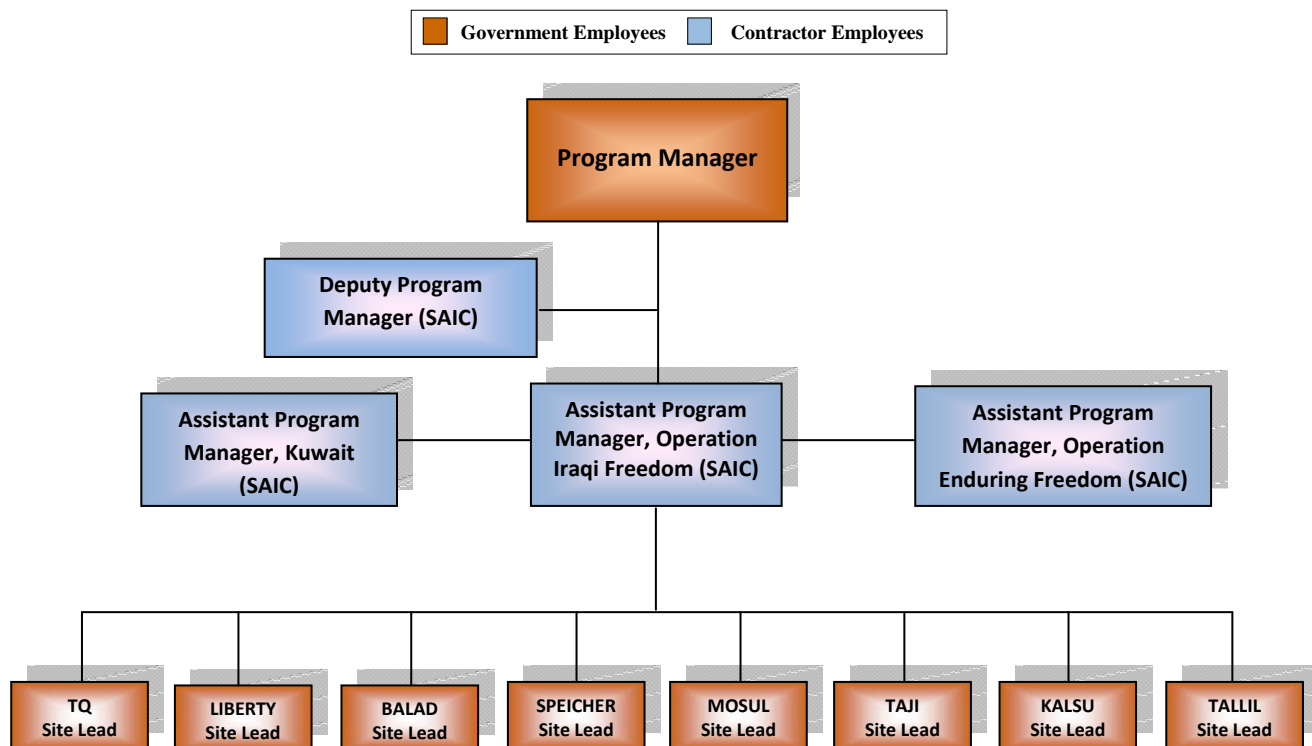
JPO MRAP officials initially created an organizational structure for theater operations that put contractor employees in key management positions in Kuwait, Iraq, and Afghanistan. This structure gave the contractor authority over DoD employees, which enabled the contractor to perform inherently governmental functions and allowed organizational conflicts of interest.

Contractor Management Roles and Responsibilities

Contractor employees were assigned to key management positions within the program, including the Deputy Program Manager, JPO MRAP Forward; the Assistant Program Manager, JPO MRAP Forward, Operation Iraqi Freedom; and the Assistant Program Manager, JPO MRAP Forward, Kuwait.

As Figure 2 shows, contractor employees held key management positions directly under the command of the Program Manager, JPO MRAP Forward, who was the primary Government official responsible for the MRAP vehicle program within Kuwait, Iraq, and Afghanistan.

Figure 2. JPO MRAP Forward Organizational Structure as of August 2009



MRAP vehicle program officials provided us with the job descriptions for the Deputy Program Manager, JPO MRAP; the Assistant Program Manager, Operation Iraqi Freedom; and the Assistant Program Manager, Kuwait.⁸ The Deputy Program Manager served as the principal advisor for the Program Manager, JPO MRAP Forward. The Deputy Program Manager's responsibilities included developing, coordinating, synchronizing, and monitoring implementation of all facets of the JPO MRAP Forward operations through the assistant program managers and theater headquarters staff. Additionally, the deputy program manager was responsible for management oversight of over 1,600 personnel at more than 50 sites throughout Kuwait, Iraq, and Afghanistan. The Assistant Program Manager, Operation Iraqi Freedom, job description required the individual to provide management for all locations in Operation Iraqi Freedom. Duties of both the deputy program manager and the Assistant Program Manager, Operation Iraqi Freedom, included developing objectives, strategies, and plans for the program; managing day-to-day operations in a complex and diverse combat environment; realigning staff functions; and managing and guiding the work-force while representing the JPO MRAP Forward. The job description of the Assistant Program Manager, Kuwait, required the individual to be responsible for all JLI and JPO MRAP Forward operations in Kuwait. Duties of the Assistant Program Manager, Kuwait, included providing analysis, assessments, logistics expertise, and coordination for the fielding and sustainment of vehicle systems.

⁸ We did not obtain the job description for the Assistant Program Manager, Operation Enduring Freedom, Afghanistan, because we did not visit Afghanistan.

Organizational Structure Enabled Inherently Governmental Functions and Allowed Organizational Conflicts of Interest

JPO MRAP officials established the deputy program manager and assistant program manager positions to provide management over Government and contract personnel conducting JPO MRAP Forward operations in theater. However, the JPO MRAP officials formed an organizational structure that included contractor employees in key management positions directly under the command of the Program Manager, JPO MRAP Forward. The deputy program manager and assistant program managers were the highest ranking JPO MRAP Forward officials for their respective countries. From our review of the requirements of the key management positions, we determined that by using contractor personnel in these positions, the officials allowed the contractor to have a large span of control over JPO MRAP Forward operations. As such, the authority provided by the organizational structure enabled the contractor to perform inherently governmental functions and allowed organizational conflicts of interest to exist.

The Deputy Product Manager for Logistics, JPO MRAP (Government employee) stated that site leads provided Government surveillance at each RSA; however, he was not able to provide supporting documentation to show evidence of their surveillance over contractor employees. In addition, we found no evidence to demonstrate that RSA site leads conducted surveillance over contractor employees during our site visit to Southwest Asia.

Further, the Military Deputy Program Manager, JPO MRAP, stated that the contractor was not directing Government personnel without ultimate authority from a Government representative, specifically the Program Manager, JPO MRAP Forward. The

The program manager was the only Government employee overseeing operations in Kuwait, Iraq, and Afghanistan.

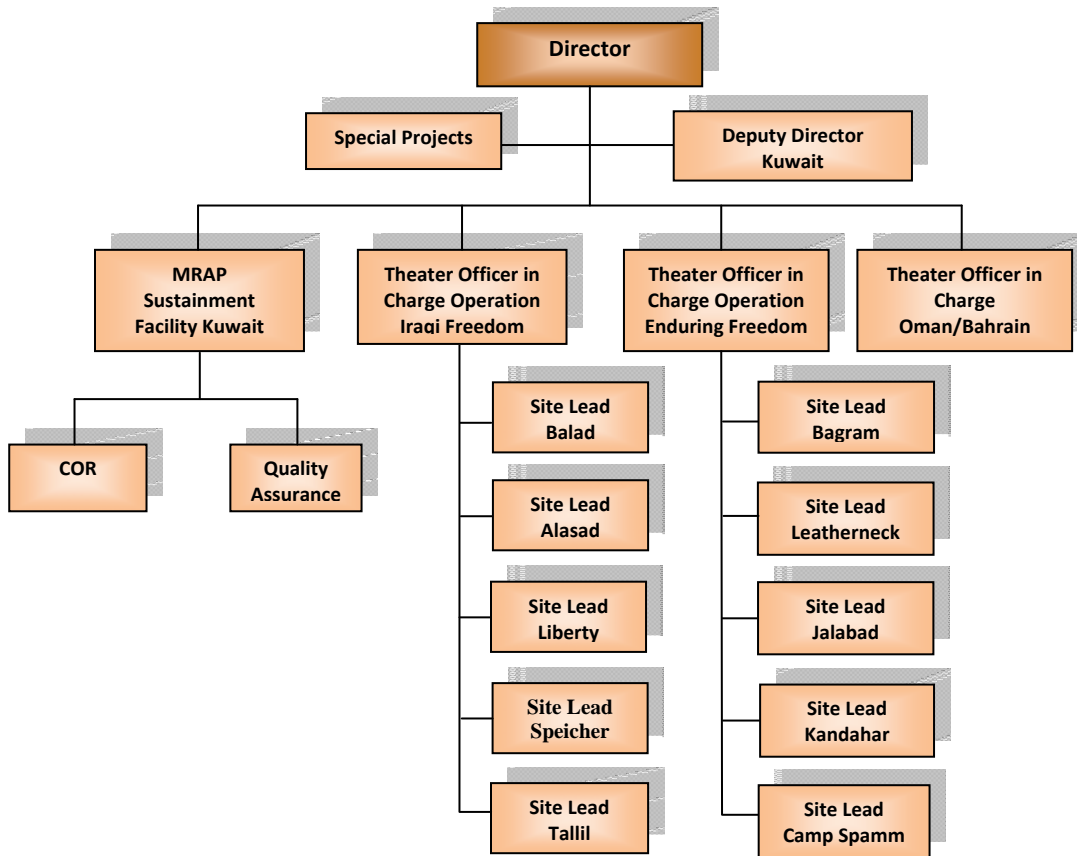
organizational charts provided by JPO MRAP Forward showed that the program manager was the only Government employee overseeing operations in Kuwait, Iraq, and Afghanistan and that all positions directly under him were filled by contractor employees, which we corroborated during our visit to theater. We do not

believe that one Government employee had the ability to effectively oversee over 1,600 personnel at more than 50 sites in three foreign countries. Consequently, this greatly increases the risk of waste and abuse on the contract.

Updated JPO MRAP Forward Organizational Structure

During our visit to Kuwait, the audit team communicated to the Program Manager, JPO MRAP Forward, our concern that he was the only Government employee holding a key management position, overseeing the entire MRAP operation in Kuwait, Iraq, and Afghanistan. The program manager stated that the “Office of the Secretary of Defense wanted the warfighter fight the war” and there were no DoD civilians available at the time; however, he was planning to replace contractor employees in theater who were in key management positions with Government personnel. Furthermore, throughout the audit, the Deputy Program Manager, JPO MRAP (Government employee) emphasized that the MRAP vehicle program was an urgent program and the program office was under time, personnel, and organizational constraints.

Figure 3. JPO MRAP Forward Organizational Structure as of July 2, 2010



Subsequent to the audit team's visit, JPO MRAP officials have stated that contractor employees have been replaced by Government personnel. JPO MRAP officials provided the audit team with the latest organizational chart for the JPO MRAP Forward as of July 2010 (see Figure 3 above). This organizational chart shows Government personnel in all positions, including those directly under the director⁹ and theater officers in charge.¹⁰ Contractor personnel were not included as part of the JPO MRAP Forward organizational structure. When we inquired about whether the chart represented management for the JPO MRAP Forward organization as a whole, the Deputy Program Manager, JPO MRAP (Government employee) stated that the Government manages the JPO MRAP Forward operations and the chart specifically identified only Government personnel in the JPO MRAP Forward organization with responsibility in theater. He also noted that not all of the contractor personnel have left the organization. We question whether the chart fully illustrates all management positions in theater. An e-mail from the Deputy Program Manager, JPO MRAP, instructed his staff to "be very careful please and very basic" in responding to the audit team's inquiry. The e-mail specifically stated that

⁹ The director was formerly known as the Program Manager, JPO MRAP Forward.

¹⁰ The theater officers in charge were formerly known as the Assistant Program Managers, JPO MRAP Forward.

“suggest we just say [the contractor employees] work for the JPO leads.” In addition, the SAIC contract employee, who held the position of Assistant Program Manager, Operation Enduring Freedom, during our site visit to Southwest Asia, was called the “SAIC Afghanistan Country Lead” as of July 2010. This position, however, was not listed in the updated organizational chart from July 2010.

Although we question whether the July 2010 chart fully illustrated all management positions in theater, the updated organizational chart showed that actions were taken to put Government personnel in key management positions. Further, due to the lack of Government personnel availability, and because the Program Managers, JPO MRAP and JPO MRAP Forward, who were in the positions during the audit, are no longer with JPO MRAP, we are not making accountability recommendations pertaining to the former Program Managers.

Peer Reviews

The Army did not perform a post-award peer review for the JLI 02 contract. Section 808 of Public Law 110-181 requires the Secretary of Defense to issue guidance on periodic independent management reviews of contracts for services. These independent management reviews serve to evaluate the contract performance, the use of contracting

These independent management reviews serve to evaluate the contract performance, the use of contracting mechanisms, the staffing of contract management and oversight functions, the extent of the agency’s reliance on the contractor to perform acquisition functions closely associated with inherently governmental functions, and other factors.

mechanisms, the staffing of contract management and oversight functions, the extent of the agency’s reliance on the contractor to perform acquisition functions closely associated with inherently governmental functions, and other factors. To meet the intent of performing independent management reviews, the Under Secretary of Defense for Acquisition, Technology, and Logistics issued DoD Instruction 5000.02, “Operation of the Defense Acquisition

System,” December 8, 2008, which requires peer reviews to be conducted on all supplies and services contracts. Specifically, DoD Instruction 5000.02 requires pre-award reviews on supplies and services contracts and post-award reviews on services contracts. These reviews seek to ensure that the requirements are clear and well defined, the acquisition approach and business strategy are appropriate, and that there are mechanisms in place to provide for proper oversight of contractor performance.

In December 2008, the Deputy Assistant Secretary of the Army (Procurement) issued a memorandum providing an implementation plan for peer reviews of contracts for supplies and services. Specifically, a Solicitation Review Board/Contract Review Board at the contracting activity is to perform a pre-award peer review and approve all procurements with an estimated value of \$50 million or more. The Solicitation Review Board/Contract Review Board is to review and assess the pre-solicitation, solicitation and contract documents for consistency, sufficiency, compliance, and application of sound business practices. Also, a post-award peer review for contracts valued at less than \$1 billion is to be conducted for services contracts that were approved by an Army

Services Strategy Panel. In April 2009, the Deputy Assistant Secretary of the Army (Procurement) issued a memorandum elaborating on the pre-award peer review policies and procedures; however, he did not provide guidance for the post-award peer reviews.¹¹ The TACOM Life Cycle Management Command issued guidance on peer review of contracts in June 2009, but it did not cover post-award peer reviews.

In November 2008, at the time of the solicitation for the JLI 02 contract, an Army Service Strategy Panel submitted an acquisition strategy for the JLI services, which described the requirement, cost, schedule, risks of the acquisition, use of competition, use of a BPA, and business arrangements for the acquisition. On February 23, 2009, a Business Clearance Board approved the award of the JLI 02 contract to SAIC. According to TACOM officials, since TACOM had not yet issued guidance pertaining to peer reviews at the time of the JLI 02 contract award, the Army Service Strategy Panel would serve as the approval board at the solicitation phase, and the Business Clearance Board would serve as the contract award approval board.

The contracting officer stated that a post-award peer review would be conducted on the JLI 02 contract once guidance was provided by the Army. The audit team believes that a post-award peer review will help ensure that the JLI 02 contract and future acquisitions of services comply with applicable statutes, regulations, policies, and other requirements. Although the Army had not issued detailed guidance on how to conduct post-award peer reviews, the December 2008 Deputy Assistant Secretary of the Army (Procurement) memorandum also required a post-award peer review to be conducted for contracts valued less than \$1 billion that were approved by an Army Service Strategy Panel. ACC-Warren officials stated that since the Deputy Assistant Secretary of the Army (Procurement) was working on guidance for post-award peer reviews, they did not believe a post-award peer review would have been useful before they received policy concerning the way in which such post-award peer reviews should be structured and conducted.

Summary

The officials inappropriately allowed the contractor to exert controls over functions that should have remained under the authority of the Federal Government when providing support to the MRAP vehicle program operations in Southwest Asia. The contractor performed inherently governmental functions by directing Government personnel, participating in disciplinary actions of Government personnel, and preparing and signing SOPs. The contractor also engaged in functions that may approach being inherently governmental by being involved in the development of contract requirements and participating in situations where the contractor personnel may be assumed to be Government representatives.

¹¹ Post-award peer review guidance was to be provided under a separate memorandum; however, the guidance had not yet been released as of October 2010.

In addition, the contracting officer did not assess organizational conflicts of interest prior to or during contract performance as required. Contractor employees were involved in providing program analysis and oversight while providing maintenance services. Contractor employees also were involved in activities in which they were unable or potentially unable to render impartial services and advice to the JPO MRAP because they were, in effect, monitoring their own performance. Also, the JPO MRAP officials created an organizational structure for JPO MRAP Forward that relied on contractor employees to provide support in both overseeing and performing maintenance and logistics activities, thereby generating potential organizational conflicts of interest. A single Government employee was assigned overseas to oversee a multimillion-dollar contract in three different countries, which greatly increased the risk for potential waste or abuse. Further, by relying on the contractor for functions that should have remained under the control of the Government, the officials increased the risk of improper execution of the contract and did not ensure that the contract for JLI services was in the best interest of DoD.

Management Comments on the Finding and Our Response

The U.S. Army Materiel Command responded to the draft report and endorsed the comments from the Executive Director, ACC-Warren, who provided the following comments on the finding.

Comments on Organizational Conflicts of Interests

The Executive Director, ACC-Warren, stated that there was miscommunication during our meeting with contracting officials. Specifically, he stated that neither the contract specialist nor the contracting officer remembered making, or agreeing with, a discussion that the contractor was involved in any way in the preparation of the contract requirements that were competed and awarded as the JLI 02 contract. He stated that the contracting officials did not have knowledge of involvement of any contractor prior to the JLI 02 contract award. In addition, the executive director indicated that one of the exceptions stated in FAR 9.505-2(b)(1) allowed the contractor to be involved in developing requirements for sole-source contracts. He stated that the JLI 02 BPA was a competitive acquisition, but JLI 02 task order 0001 was not; and because the task order was issued as a sole-source contract for JLI-type services, it met the exception in FAR 9.505-2(b)(1). Furthermore, the executive director said the contracting officer stated that her organizational conflicts of interest review was not separately documented because FAR 9.504(d) only requires that an organizational conflicts of interest review be documented when substantive issues concerning organizational conflicts of interest exist. He stated that our draft report seemed to treat the absence of documentation of a review as proof that no review was conducted.

Our Response

We disagree with the comments from the Executive Director, ACC-Warren. We held meetings with contracting officials and the Product Manager for Logistics and Sustainment, JPO MRAP, on December 7, 2009. In the meeting with contracting

officials, the contracting officer explained how the JLI 01 SOW was developed, and the contracting specialist specifically stated that “SAIC and JPO MRAP officials worked together to prepare the general requirements” for the JLI 02 contract SOW. The contracting officer agreed with the contracting specialist. We then met with the Product Manager for Logistics and Sustainment, JPO MRAP, to independently confirm the information pertaining to the development of the JLI 02 contract SOW. The product manager stated that JPO MRAP and SAIC personnel discussed the requirements included in the SOW for the contract. Based on statements made by the contracting officials and the product manager, we believe that the contractor was involved in the preparation of the contract requirements.

Management comments correctly stated that FAR 9.505-2(b)(1) allows contractor involvement for requirements in sole-source contracts; however, contractor involvement should not have been allowed for the requirements for the JLI 02 BPA. The JLI 02 BPA was issued as a competitive single-source contract, which allowed all purchases from the BPA to be procured from the same contractor, therefore making task order 0001 of the BPA a sole-source contract. As we discussed in the report, the JLI 02 BPA was solicited through GSA multiple-award-schedule contracts, and BPAs and orders issued against contracts awarded by GSA are considered to be issued using full and open competition. Therefore, the exception of sole-source contracts specified in FAR 9.505-2(b)(1) does not apply in this case since the JLI 02 BPA was a competitive acquisition.

In addition, during the meeting with contracting officials on December 7, 2009, we asked the officials whether the contractor had notified the contracting officer of any potential conflicts of interest that may have arisen during their work on the JLI 02 contract. The contracting officer stated that the contractor had not notified her of any conflicts of interest. During this meeting, we also provided examples to the contracting officer of how SAIC’s duties and performance of the JLI 02 contract in Southwest Asia posed conflicting roles. The contracting officer was notably surprised and agreed that the examples we provided showed that the contractor had organizational conflicts of interest. She stated that “[organizational conflicts of interest] were not evaluated beyond SAIC’s statement”; however, the legal office had certified the award. The contracting officer further stated that ACC-Warren officials did not assess organizational conflicts of interest for the JLI 02 contract but were in the process of assessing organizational conflicts of interest on new procurements. We are aware that FAR 9.504(d) states that an organizational conflicts of interest review must be documented only where a substantive potential organizational conflict of interest has been identified. We did not treat the absence of documentation of an organizational conflict of interest review as proof that no review was performed; the contracting officer’s statements clearly indicated that a review of organizational conflicts of interest was not performed by the contracting officer for the JLI 02 contract. Further, based on the examples cited in the report (p. 10 for example), substantive potential organizational conflicts of interest did exist and should have been identified prior to the contract award.

Recommendations, Management Comments, and Our Response

A.1. We recommend that the Commander, Marine Corps Systems Command, require the Joint Program Office, Mine Resistant Ambush Protected Vehicle Program, officials to obtain training on inherently governmental functions and organizational conflicts of interest requirements as prescribed by the Federal Acquisition Regulation.

Commander, Marine Corps Systems Command, Comments

The Commander, MCSC, agreed, stating that he will issue guidance for all personnel assigned to the Joint MRAP Vehicle Program to receive annual training on inherently governmental functions and organizational conflicts of interest. The Commander, MCSC, stated that the training will be developed and completed by September 30, 2011.

A.2. We recommend that the Program Manager, Joint Program Office, Mine Resistant Ambush Protected Vehicle Program, issue guidance that all direction or tasking shall come from Government employees.

Commander, Marine Corps Systems Command, Comments

The Commander, MCSC, responded on behalf of the Program Manager, JPO MRAP. The Commander, MCSC, agreed, stating that he will issue formal guidance not later than May 31, 2011, to all personnel that all direction or tasking shall come from Government employees. On June 15, 2011, the Commander, MCSC, issued formal guidance to all personnel that military and/or DoD civilians are to provide leadership, management, and oversight on all DoD contracts within their purview to ensure proper contract performance and execution. He stated that at no time are contractor personnel to supervise, manage, or provide work direction to DoD civilian or military personnel.

A.3. We recommend that the Executive Director, Army Contracting Command-Warren:

a. Require contracting officials to obtain training on inherently governmental functions and organizational conflict of interest requirements, as prescribed by the Federal Acquisition Regulation.

Executive Director, Army Contracting Command-Warren, Comments

The Executive Director, ACC-Warren, agreed, stating that ACC-Warren will require contracting officials to obtain training on inherently governmental functions and organizational conflicts of interest requirements, described in FAR 7.503. He stated that December 30, 2011, was the target completion date to have all contracting officers trained on both organizational conflicts of interest and inherently governmental functions.

b. Perform a review of the contracting officers' performance related to procuring and administering the Joint Logistics Integrator services contract and initiate, as appropriate, any administrative actions warranted by the review.

***Executive Director, Army Contracting Command-Warren,
Comments***

The Executive Director, ACC-Warren, agreed, stating that ACC-Warren will perform a review of the contracting officers' actions and initiate, as appropriate, any actions warranted by the review. He stated that to ensure an impartial and thorough assessment, the review will be conducted by a management official from ACC-Warren outside the chain of command of the contracting officers in question. The Executive Director, ACC-Warren, stated that the target completion date was December 30, 2011, and the review results would be presented to the Principal Assistant Responsible for Contracting, who will determine any corrective actions that may be warranted.

c. Issue guidance to instruct and remind all contracting officers of the requirements in the Federal Acquisition Regulation for identifying, evaluating, and resolving organizational conflicts of interest.

***Executive Director, Army Contracting Command-Warren,
Comments***

The Executive Director, ACC-Warren, agreed, stating that ACC-Warren will issue guidance to instruct and remind all contracting officers of the requirements in the FAR for identifying, evaluating, and resolving organizational conflicts of interest, with a target completion date of December 30, 2011.

d. Require contracting officials to review contract W56HZV-09-A-0003, delivery order 0001, to ensure that organizational conflicts of interest have been mitigated.

***Executive Director, Army Contracting Command-Warren,
Comments***

The Executive Director, ACC-Warren, agreed, stating that ACC-Warren will require contracting officials to review contract number W56HZV-09-A-0003, delivery order 0001, and ensure that any identified organizational conflicts of interests are reviewed and effectively mitigated, with a target completion date of December 30, 2011.

A.4. We recommend that the TACOM Principal Assistant Responsible for Contracting perform a peer review on contract W56HZV-09-A-0003, delivery order 0001.

***Executive Director, Army Contracting Command-Warren,
Comments***

The Executive Director, ACC-Warren, is also the TACOM Principal Assistant Responsible for Contracting. The Executive Director, ACC-Warren, agreed, stating that ACC-Warren will perform a peer review on contract W56HZV-09-A-0003, delivery order 0001, with a target completion date of December 30, 2011.

Our Response

Comments from the Commander, MCSC, and Executive Director, ACC-Warren, are responsive, and no further comments are required.

Finding B. Use of Time-and-Materials Contract Type Should Be Limited

The contracting officer at ACC-Warren did not adequately support the need to use a T&M contract for the follow-on JLI effort, valued at \$285.5 million. Specifically, the Determination and Findings (D&F) did not adequately support the use of a T&M contract to procure services for the JLI follow-on effort when another contract option was available. This occurred because the contracting officer stated that she could not estimate the extent or duration of the work needed due to constant changes in mission need and work performed, even though 18 months of historical data from the initial JLI contract could have provided a basis for estimating the work. As a result, the contracting officer may have incurred unnecessary costs by using the riskiest contract type that provides no incentive to the contractor for cost control or labor efficiency.

Time-and-Materials Criteria

FAR 16.601, “Time-and-Materials, Labor-Hour, and Letter Contracts,” states that a T&M contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. A T&M contract acquires services based on direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit. In addition, FAR 16.601 states that a T&M contract provides no positive profit incentive to the contractor for controlling costs or labor efficiency; therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

Furthermore, a T&M contract may only be used if the contracting officer prepares a D&F to support that no other contract type is suitable. FAR subpart 1.7, “Determination and Findings,” states that each D&F must set forth enough facts and circumstances to clearly and convincingly justify the specific determination made in the D&F.

SAIC’s Support as the Joint Logistics Integrator

To support the JPO MRAP for logistics services, contracting officers at ACC-Warren awarded two contracts for the JLI effort. The JLI supported the JPO MRAP Forward by performing logistic engineering analysis, as well as providing oversight and management of the efforts for all activities associated with fielding, training, and sustainment operations in theater.

JLI 01 Contract

On November 30, 2007, ACC-Warren awarded the initial JLI effort (JLI 01, contract W56HZV-04-A-0005, delivery order 0256) to Jacobs Technology. The Program Manager, JPO MRAP Forward, certified that this effort was so urgent that initially awarding the contract as a T&M undefinitized contractual action was in the best interest

of the Government. The final definitized contract was valued at \$193.4 million, and its period of performance extended from December 3, 2007, through June 2009.

ACC-Warren officials explained that the initial JLI effort was awarded as a T&M contract because the BPA that it was awarded against was a T&M contract and also because the JLI effort was a new type of requirement unfamiliar to contracting and program officials. ACC-Warren officials stated that they used GSA multiple-award-schedule contracts because these contracts included GSA-determined fair and reasonable labor rates and categories, which allowed them to award the contract for JLI services more quickly. In addition, both contracting and program officials were uncertain of what the JLI services would entail; therefore, ACC-Warren officials believed a T&M contract type would be a better means for the procurement.

The FAR requires that a D&F be prepared and signed by the contracting officer before issuing T&M contract types; however, ACC-Warren officials were unable to provide the required D&F document for the initial JLI effort. ACC-Warren officials informed us that they received management guidance waiving this requirement; however, they did not have documentation to support a waiver releasing ACC-Warren officials from having to prepare a D&F to award a T&M contract for the effort.

JLI 02 Contract

On May 4, 2009, ACC-Warren awarded the JLI follow-on effort (JLI 02, contract W56HZV-09-A-0003, delivery order 0001), valued at \$285.5 million, to SAIC. The contract was awarded as a T&M contract against a BPA exclusive for logistics and operational readiness services. ACC-Warren officials prepared a D&F for the BPA, which concluded that contracts issued against the BPA would be awarded as T&M contracts. According to the D&F, the overall rationale was based on the fact that the initial effort had been awarded on a T&M basis; therefore, the follow-on effort should be awarded on a T&M basis as well, to meet the needs of the Government for the types of services to be acquired.

ACC-Warren officials explained that TACOM's legal counsel recommended the JLI follow-on effort to be issued as a T&M contract because the requirements for the work

A T&M contract may be used only when the contracting officer may not accurately estimate the extent or duration of the work or anticipate costs with any reasonable degree of confidence at the time of placing the contract.

performed were constantly changing and uncertain; however, ACC-Warren officials stated they did not have any documentation supporting this legal recommendation. ACC-Warren officials also explained that the duration of services required for the JLI follow-on

effort could not be accurately estimated due to the services occurring in contingency locations in Iraq, Afghanistan, Qatar, and Kuwait.

A T&M contract may be used only when the contracting officer may not accurately estimate the extent or duration of the work or anticipate costs with any reasonable degree of confidence at the time of placing the contract. ACC-Warren officials could have used

historical data from the initial JLI effort to estimate the extent or duration of work required with a reasonable degree of confidence for the JLI follow-on effort. The JLI follow-on effort was awarded with a 1-year period of performance and continued the performance of similar services provided during the initial JLI effort, such as maintenance, joint logistics operations, and theater personnel management. In addition, the JLI follow-on effort used GSA multiple-award-schedule contract labor categories similar to those GSA labor categories used for the initial JLI effort.

The contracting officer stated that experience with the initial JLI effort proved that T&M contract types were the only option; however, FAR 12.207, “Contract Type,” allows firm-fixed-price, fixed-price with economic adjustment, T&M, and labor-hour contracts to be used to procure commercial services. The GSA-multiple-award-schedule contracts used for the JLI follow-on effort allowed for a streamlined acquisition process, as well as award of firm-fixed-price or T&M contract types. ACC-Warren officials could have used labor-category data and experience from the initial JLI effort to estimate a basis for the extent and duration of work needed within a reasonable degree of confidence for the JLI follow-on effort. Instead, ACC-Warren officials chose to procure JLI services using a T&M contract, the riskiest contract type. A T&M contract provides no profit incentive to the contractor for labor efficiency or controlling costs.

A T&M contract provides no profit incentive to the contractor for labor efficiency or controlling costs.

Because profit is included in the hourly labor rate, the contractor earns profit for every additional hour worked. Therefore, ACC-Warren should have evaluated and used historical data to define the requirements well enough to use a less risky contract type for the services for the JLI follow-on effort, valued at \$285.5 million.

In addition, on June 28, 2010, the Under Secretary of Defense for Acquisition, Technology, and Logistics provided a framework for restoring affordability to defense products and services. The framework specifically calls for the use of fixed-price, performance-based contracts and the phase out of T&M contracts whenever possible. ACC-Warren officials should take action to encourage a restoration of affordability for defense products and services.

Contract Oversight Requires Additional DoD Personnel

ACC-Warren officials did not provide sufficient Government surveillance over SAIC’s performance as the JLI. FAR 16.601, “Time-and-Materials Contracts,” states that a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency; therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used. Also, Defense Federal Acquisition Regulation Supplement 201.602-2, “Responsibilities,” states that a contracting officer’s representative (COR) is to assist in the technical monitoring or administration of a contract. However, ACC-Warren officials did not provide the means for appropriate Government surveillance over these contractor services.

The Deputy Product Manager for Logistics, JPO MRAP, was designated as the COR on May 1, 2009; he had never visited theater. The Quality Assurance Surveillance Plan stated that the JPO MRAP Forward would be the eyes and ears of the COR in theater and would report on JLI performance in theater to the COR. As discussed in Finding A, SAIC contract employees held key management positions under the Program Manager, JPO MRAP Forward, who was the only Government official responsible for the entire MRAP vehicle program in theater.

Subsequently, the Program Manager, JPO MRAP Forward, was designated as the COR on July 21, 2009, over 2 months after the contract award and, as illustrated in Figure 2, was the only Government employee in a key management position in the JPO MRAP Forward as of August 2009. The Quality Assurance Surveillance Plan also required the contractor to provide a list of reports to the JPO MRAP on the methodology used to monitor the contractor's performance. According to the Quality Assurance Surveillance Plan, the COR would use these reports to assess the overall quality of SAIC's performance. However, ACC-Warren officials could only provide one of the various reports we requested. The report ACC-Warren officials provided did not show that a DoD official reviewed the accuracy of the contents of the report. In addition, we do not believe that one Government employee was capable of assisting in the technical monitoring or administration of the JLI contract as well as providing oversight over the entire JPO MRAP Forward. During the site visit to Southwest Asia (July through August 2009), the audit team observed that the program manager was the only Government employee performing oversight over SAIC personnel. On October 22, 2009, two additional CORs were designated and the program manager's COR appointment was rescinded on April 21, 2010. Therefore, we are not making a recommendation on contract oversight.

Summary

The D&F and prior contract data did not adequately support the contracting officer's decision for procuring commercial services using a T&M contract type. The contracting officer could have used information from the initial JLI effort to estimate the extent or duration of the work needed for the JLI follow-on effort. Instead, the contracting officer awarded the JLI follow-on effort as a T&M contract, which provides no positive profit incentive to the contractor for labor efficiency or cost control. When using this type of contract, the contracting activity should monitor and manage the contractor's performance closely.

The contracting officer could have used information from the initial JLI effort to estimate the extent or duration of the work needed for the JLI follow-on effort.

Management Comments on the Finding and Our Response

The U.S. Army Materiel Command responded to the draft report and endorsed the comments from the Executive Director, ACC-Warren, who provided the following comments on the finding.

Comments on JLI 02 Contract Type

The Executive Director, ACC-Warren, stated that at the end of JLI 01, the MRAP program was far from an established, steady-state program that could have allowed JLI 02 to be estimated and procured on a firm-fixed-price basis. He also stated that they anticipated that the decrease of the JLI manning requirement from April 2011 forward would be “as unpredictable and as bumpy” as the growth path has been since 2009. He further stated that executing JLI 02 as an instrument permitting only firm-fixed-price task orders would likely result in mission failure.

Our Response

We did not suggest that the entire JLI 02 contract be firm-fixed-price. We recommended that a process be established to gather and analyze data from the JLI contract, so that selected tasks could be converted to fixed-price work.

Recommendation, Management Comments, and Our Response

B. We recommend that the Executive Director, Army Contracting Command-Warren, require contracting officials to establish a process that will gather and analyze data from the Joint Logistics Integrator contract, so that selected tasks can be converted to fixed-price work.

Executive Director, Army Contracting Command-Warren, Comments

The Executive Director, ACC-Warren, agreed stating that contracting officials will work with the Program Manager, MRAP’s procurement analyst to establish a process that will gather and analyze data from the JLI contract to determine if selected tasks can be converted to fixed-price work, with a target completion date of December 30, 2011.

Our Response

The comments are responsive, and no further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from July 2009 through February 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We collected, reviewed, and analyzed documents from March 2004 through October 2010. We reviewed General Services Administration Schedule contracts pertaining to Joint Logistics Integrator (JLI) services, JLI statements of work, the Mine Resistant Ambush Protected (MRAP) Joint Supportability Plan, the JLI 02 Acquisition Plan, standard operating procedures, contractor cost proposals, Quality Assurance Surveillance Plans, organizational charts, Limited Technical Inspection evaluations, and additional documents supporting the basis for award. Additionally, we reviewed Blanket Purchase Agreement (BPA) W56HZV-04-A-0005; BPA W56HZV-09-A-0003; W56HZV-04-A-0005, delivery order 0256; W56HZV-09-A-0003, task order 0001; and their associated modifications, for JLI services from the two contracts awarded to Jacobs Technology and Science Applications International Corporation (SAIC).

We reviewed applicable contracting regulations, including the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. We interviewed contracting and program officials from the Joint Program Office (JPO) MRAP at TACOM Life Cycle Management Command. We also went to Kuwait and Iraq. In Kuwait, we visited the MRAP Vehicle Sustainment Facility. In Iraq, we visited the JPO MRAP Forward Headquarters in Balad, the Balad Regional Support Activity, and the Camp Liberty Regional Support Activity. While in Kuwait and Iraq, we interviewed JPO MRAP Forward personnel, SAIC maintenance personnel, Red River Army Depot personnel, and Quality Assurance and Quality Control personnel.

This is the third in a series of reports addressing maintenance support for the MRAP vehicles. For this report, the audit team limited the scope to only JLI services. The team previously reported on the Field Service Representative and Instructor services procured to support MRAP vehicle maintenance and on the award of the Instructor services contract to TJ FIG. During the review of Field Service Representative and Instructor services supporting MRAP maintenance requirements, we identified that the JLI is an integral part of MRAP logistics program and maintenance support; therefore, we included the review of JLI services in our audit scope. We did not visit Afghanistan as part of this audit.

Use of Computer-Processed Data

We relied on computer-processed data from the Electronic Document Access Web site. Electronic Document Access is a Web-based system that provides online access of acquisition-related documents. We used the system to obtain contractual documents to

identify JLI services procured for the MRAP vehicle program. We compared the Electronic Document Access documents with statements and documents provided by Army Contracting Command-Warren officials. From these procedures, we are confident that the Electronic Document Access Web site was sufficiently reliable for the purpose of acquiring contract documents for our analysis of JLI services.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), the DoD Inspector General (DoD IG), and U.S. Army Audit Agency (AAA) have issued seven reports discussing MRAP vehicle procurements. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>. Unrestricted Army reports can be accessed from .mil and gao.gov domains over the Internet at <https://www.aaa.army.mil/>.

GAO

GAO Report No. GAO-08-884R, “Rapid Acquisition of Mine Resistant Ambush Protected Vehicles,” July 15, 2008

DoD IG

DoD IG Report No. D-2011-036, “Competition Should be Used for Instructor Services for the Mine Resistant Ambush Protected Vehicles,” February 3, 2011

DoD IG Report No. D-2010-068, “Government Oversight of Field Service Representative and Instructor Services in Support of the Mine Resistant Ambush Protected Vehicle Program,” June 17, 2010

DoD IG Report No. D-2009-046, “Procurement and Delivery of Joint Service Armor Protected Vehicles,” January 29, 2009

DoD IG Report No. D-2007-107, “Procurement Policy for Armored Vehicles,” June 27, 2007

Army

AAA Report No. A-2010-0156-ALC, “Compliance With Section 807 of the 2008 National Defense Authorization Act,” August 24, 2010

AAA Report No. A-2009-0221-ALA, “Effect of the Mine Resistant Ambush Protected Vehicle Upon Tactical Vehicle System Requirements,” September 21, 2009

Appendix B. Examples of SAIC Performing Inherently Governmental Functions

Contractor personnel performed inherently governmental functions by directing Government personnel and participating in disciplinary actions of Government personnel, which is prohibited by Federal Acquisition Regulation subpart 7.5, “Inherently Governmental Functions.”

Direction of Government Personnel

The Assistant Program Manager, Joint Program Office, Mine Resistant Ambush Protected (JPO MRAP) Forward, Operation Iraqi Freedom (contractor employee) directed the Red River Army Depot (RRAD) Liaison Officer (Government employee) to meet with him stating that it was the Liaison Officer’s responsibility to adhere to the assistant program manager’s requests:

I am not going to chase you around. It is ***your responsibility*** to stop by and see me.
If you have an emergency that has you otherwise engaged, you should have already ***informed me*** as such.
Since you have not ***informed me*** of any emergency . . . I cannot think of any reasons for you to not to have completed the ***task I have asked of you***.
It would be in ***your best interest*** to see me as soon as you possibly can.
If I were you, I would make this your top priority. [emphasis added]

The tone of the e-mail suggested that the Liaison Officer’s job security was at risk if he did not follow the assistant program manager’s directions.

The assistant program manager did not allow RRAD management (Government employees) to hire RRAD personnel without coordinating actions with the assistant program manager first, as directed by the Program Manager, JPO MRAP Forward (Government employee). The assistant program manager stated that he would specifically authorize any RRAD personnel in-bound to theater.

The Balad and Camp Liberty Regional Support Activity (RSA) site leads stated that the assistant program manager informed all RSA site leads in Iraq that he was the first-line supervisor and that all personnel movements were to be filtered through and authorized by him. In one occurrence, two RSA site leads supported a RRAD employee transfer; however, the transfer had to be approved by the assistant program manager first, demonstrating the assistant program manager’s role as first-line supervisor for all RSA site leads in Iraq.

Involvement in Disciplinary Actions

The RRAD Liaison Officer stated that RRAD personnel were having difficulties disciplining, promoting, and extending their own personnel’s time in theater without the assistant program manager’s involvement, which resulted in the delay of processes. The Liaison Officer further stated that the assistant program manager had authorized RRAD

personnel back to the United States and had outlined disciplinary actions, which were later approved by the battalion commander.

The Balad RSA site lead stated that the assistant program manager delayed a mechanic's letter of release. When we spoke to the assistant program manager, he admitted that he provided his recommendation in several disciplinary incidents that warranted letters of release of RRAD personnel.

RRAD Headquarters personnel stated that the Program Manager, JPO MRAP Forward (Government employee) had given the Deputy Program Manager, JPO MRAP Forward (contractor employee) all administrative and disciplinary authority over the MRAP vehicle program personnel in Kuwait. The deputy program manager confirmed to the audit team that he briefed Government officials on disciplinary issues with RRAD mechanics.

Appendix C. Duplicated Efforts in MRAP Vehicle De-processing

Joint Logistics Integrator (JLI) personnel performed mine resistant ambush protected (MRAP) vehicle de-processing, which included conducting a series of vehicle functional checks and resolving anomalies observed during the functional checks. During the fielding of MRAP vehicles, vehicles were shipped to Kuwait and re-routed to Regional Support Activities (RSAs) throughout Iraq and Afghanistan to be issued to military units. JLI personnel duplicated the efforts of Red River Army Depot (RRAD) personnel by de-processing MRAP vehicles in Kuwait before RRAD personnel de-processed the same vehicles in Iraq. Since June 2007, RRAD personnel have supported the Joint Program Office (JPO) MRAP by performing MRAP vehicle de-processing at RSAs in Iraq and Afghanistan prior to the vehicles being issued to military units. However, JLI personnel began performing MRAP vehicle de-processing in Kuwait during the initial JLI effort in December 2007 and continued de-processing MRAP vehicles during the JLI follow-on effort. The audit team visited Kuwait and Iraq in July and August of 2009 and discovered that JLI and RRAD personnel had de-processed MRAP vehicles using the same Limited Technical Inspection checklists to perform and record vehicle functional checks.* As a result, the JPO MRAP duplicated MRAP vehicle de-processing efforts by allowing JLI personnel to de-process MRAP vehicles in Kuwait using the same Limited Technical Inspection checklists used by RRAD personnel at RSAs throughout Iraq.

JPO MRAP officials stated that inspections were appropriate in both cases in order to optimize crew safety. They stated that vehicles could have been damaged in transit, or may have lost required components or pieces of equipment while being moved or while in storage awaiting transit. JPO MRAP officials stated that the inspections helped to ensure that equipment issued to units was operational and complete, thereby avoiding potential failures or shortfalls that could come to light during a combat mission. However, we still question why JLI personnel performed the inspections in Kuwait using the same checklist as the RRAD personnel had used when inspecting the vehicles before handing them off to units in Iraq. A proper inspection at the point of hand off to the units allows for the identification and resolution of any problems.

* Some Limited Technical Inspection checklists may have contained more inspection procedures than others; however, the majority of the inspection procedures were the same.

U.S. Marine Corps Systems Command Comments



THE ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

MAY 11 2011

MEMORANDUM FOR DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR
GENERAL FOR AUDITING

SUBJECT: Department of Defense Inspector General (DoDIG) Draft Report D2009-D000CK-0100.002, "Contract Management of Joint Logistics Integrator Services in Support of Mine Resistant Ambush Protected Vehicles Needs Improvement"

The Department of the Navy (DoN) has reviewed the DoDIG Draft Report D2009-D000CK-0100.001 and agrees with DoDIG's recommendations A.1 and A.2. The Marine Corps has already taken action (see attached) based on this recommendation to ensure that future contracting actions are handled with the appropriate government personnel.

The DoN has no comments for recommendations A.3 or A.4. The responses to those recommendations should be provided by the US Army.

A handwritten signature in black ink, appearing to read "SJS", is positioned above the name Sean J. Stackley.

Sean J. Stackley

Attachments:
As stated



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
7500
RFR-80
3 May 11

From: Commandant of the Marine Corps
To: Deputy Inspector General for Auditing, Acquisition and
Contract Management, Department of Defense Office of
Inspector General
Via: Deputy Assistant Secretary of the Navy, Expeditionary
Warfare
Subj: COMMANDANT OF THE MARINE CORPS (CMC) OFFICIAL COMMENTS
TO DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL
(DODIG) DRAFT REPORT D2009-D000CK-0100.002, "CONTRACT
MANAGEMENT OF JOINT LOGISTICS INTEGRATOR (JLI)
SERVICES IN SUPPORT OF MINE RESISTANT AMBUSH PROTECTED
VEHICLES (MRAP) NEEDS IMPROVEMENT," DATED MARCH 23, 2011

Ref: (a) DODIG memo of March 23, 2011

Encl: (1) CMC Official Responses

1. Official responses required by the reference are provided at the enclosure.
2. Enclosure (1) was coordinated with Headquarters, U. S. Marine Corps, Programs & Resources and Marine Corps Systems Command.
3. The Marine Corps appreciates the opportunity to respond to the report.
4. If you have any questions about the responses, please contact [REDACTED], Headquarters, U. S. Marine Corps Senior Audit Liaison, email [REDACTED] or phone [REDACTED].

JOHN E. WISSLER
Deputy Commandant
for Programs and Resources

Copy to:
NAVINGEN (N4)
DMCS
CMDR MCSC



UNITED STATES MARINE CORPS
MARINE CORPS SYSTEMS COMMAND
2200 LESTER ST
QUANTICO, VIRGINIA 22134-6050

IN REPLY REFER TO:
DFM
15 Apr 11

From: Commander, Marine Corps Systems Command
To: Deputy Commandant for Programs and Resources, Fiscal
Division Audit and Review Branch

Subj: COMMENTS ON DODIG DRAFT REPORT DATED 23 MARCH 2011
PROJECT NUMBER D2009-D000CK-0100.002 "CONTRACT MANAGEMENT
OF JOINT LOGISTICS INTEGRATOR (JLI) SERVICES IN SUPPORT
OF MINE RESISTANT AMBUSH PROTECTED VEHICLES (MRAP) NEEDS
IMPROVEMENT"

Encl: (1) DODIG DRAFT REPORT DATED 23 MARCH 2011
PROJECT NUMBER D2009-D000CK-0100.002 "CONTRACT
MANAGEMENT OF JOINT LOGISTICS INTEGRATOR SERVICES IN
SUPPORT OF MINE RESISTANT AMBUSH PROTECTED VEHICLES
NEEDS IMPROVEMENT"

1. The findings and recommendations in the subject DODIG draft report (enclosure (1)) were reviewed. The USMC response to the recommendations and the status of requested actions is provided below.

a. Review of Internal Controls: We identified internal control weaknesses in the award and administration of the JLI contracts. Specifically, Joint Program Office (JPO) MRAP and Army Contracting Command (ACC) Warren officials allowed the contractor to perform inherently governmental functions and to have organizational conflicts of interest while performing the JLI functions. Furthermore, the contracting officer did not adequately support the decision to award a Time and Materials contract type for procuring JLI services.

USMC Response: Concur. The internal control weakness identified on page 3 of enclosure (1) will be officially addressed in the Marine Corps Systems Command 2011 Overall Managers' Internal Control Program.

b. Recommendation A.1: We recommend that the Commander, Marine Corps Systems Command require the Joint Program Office, Mine Resistant Ambush Protected Vehicle Program, officials to obtain training on inherently governmental functions and

Encl (1)

Subj: COMMENTS ON DODIG DRAFT REPORT DATED 23 MARCH 2011
PROJECT NUMBER D2009-D000CK-0100.002 "CONTRACT MANAGEMENT
OF JOINT LOGISTICS INTEGRATOR SERVICES IN SUPPORT OF MINE
RESISTANT AMBUSH PROTECTED VEHICLES NEEDS IMPROVEMENT"

organizational conflicts of interest requirements as prescribed
by the Federal Acquisition Regulation.

USMC Response: Concur. The Commander, Marine Corps Systems
Command will issue guidance for all personnel assigned to the
Joint MRAP Vehicle Program (JMVP) to receive annual training on
inherently governmental functions and organizational conflicts of
interest. The training will be developed and completed by 30
September 2011.

c. Recommendation A.2: We recommend that the Program
Manager, Joint Program Office, Mine Resistant Ambush Protected
Vehicle Program, issue guidance that all direction or tasking
shall come from Government employees.

USMC Response: Concur. The Commander, Marine Corps Systems
Command will issue formal guidance to all personnel that states
all direction or tasking shall come from Government employees.
The letter will be issued NLT 31 May 2011.

3. For questions regarding this matter, please contact
[REDACTED], MARCORSYSCOM Audit Liaison at [REDACTED],
email [REDACTED].

Ann Cecile M. McDermodt

ANN-CECILE M. MCDERMOTT
By direction

Army Materiel Command Comments



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
9301 CHAPEK ROAD
FORT BELVOIR, VA 22060-5527

AMCIR

13 APR 2009


MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN: [REDACTED]
[REDACTED], Room 300, 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: Command Reply to DoDIG Draft Report: Contract Management of Joint Logistics Integrator Services in Support of Mine Resistant Ambush Protected Vehicles Needs Improvement (Project No. D2009-D000CK-0100.002) (D0908)

1. The U.S. Army Materiel Command (AMC) has reviewed the subject report. AMC endorses the enclosed comments from the U.S. Army Contracting Command.

2. The AMC point of contact is [REDACTED], or email:
[REDACTED]

Encl


TERESA W. GERTON
Executive Deputy to the
Commanding General



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
9301 CHAPEK ROAD
FORT BELVOIR, VA 22060-6527

APR 14 2011

AMSCC-IR

MEMORANDUM FOR [REDACTED], Director, Internal Review and Audit Compliance Office, Headquarters, U.S. Army Materiel Command, 9301 Chapek Road, Fort Belvoir, VA 22060

SUBJECT: Contract Management of Joint Logistics Integrator Services in Support of Mine Resistant Ambush Protected Vehicles Needs Improvement, (Project No. D2009-D000CK-0100.002) (D1126)

1. References:

a. Memorandum, Army Contracting Command –Warren, 4 April 2011, subject: same as above (enclosed).

b. Memorandum, Department of Defense Inspector General, 23 March 2011, subject: same as above.

c. Draft Report, Department of Defense Inspector General, 23 March 2011, subject: same as above.

2. After reviewing the referenced documents, the Army Contracting Command concurs with the comments from the Army Contracting Command-Warren.

3. The ACC point of contact is [REDACTED], [REDACTED] or email:
[REDACTED]

Encl

JEFFREY P. PARSONS
Executive Director



DEPARTMENT OF THE ARMY
UNITED STATES ARMY CONTRACTING COMMAND
ARMY CONTRACTING CENTER-WARREN
6601 EAST 11 MILE ROAD
WARREN, MICHIGAN 48397-5000

REPLY TO
ATTENTION OF:

CCTA-CPCQ

4 Apr 2011

MEMORANDUM

THRU: Executive Director, U.S. Army Contracting Command, 9301 Chapek Road, Fort Belvoir, VA 22060-5527 ATTN: ACC-HQs, Internal Review and Audit Compliance Office ()

THRU: Executive Deputy to the Commanding General, HQs AMC, 9351 Hall Rd., Ft. Belvoir, VA 22060 ATTN: AMC HQs, Internal Review and Audit Compliance Office ()

TO: Program Director, Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22022-4704 ATTN: ()

SUBJECT: Contract Management of Joint Logistics Integrator Services in Support of Mine Resistant Ambush Protected Vehicles Needs Improvement (Project No. D2009-D000CK-0100.002)

1. Reference memorandum, DODIG, dated 23 March 2011, SAB.
2. We have reviewed the subject DODIG Draft Report and are enclosing the official Army Contracting Center-Warren reply.
3. The TACOM Internal Review and Audit Compliance will track the status of our corrective actions through completion.
4. Point of contact for this reply is (), or email: ().

Encl


Harry P. Hallock
Executive Director
Army Contracting Center-Warren

Encl

**U.S. Army Contracting Command - Warren
Comments on DODIG Draft Report,
Contract Management of Joint Logistics Integrator Services in Support of Mine
Resistant Ambush Protected Vehicles Needs Improvement
(Project No. D2009-D000CK-0100.002-JLIS)
4 April 2011**

OBJECTIVE: DODIG's overall objective was to determine whether the Mine Resistant Ambush Protected (MRAP) vehicle program and contracting officials were adequately supporting the MRAP vehicle maintenance requirements and appropriately awarding and administering maintenance contracts. This is the third in a series of reports addressing the maintenance support for MRAP vehicles. DODIG's first report addressed field service representative and instructor services procured to support MRAP vehicle maintenance. The second report addressed the award of the instructor services contract to TJ FIG. For this report, DODIG limited their scope to the Joint Logistics Integrator (JLI) contracts awarded to Science Applications International Corporation (SAIC) and Jacobs Technology.

CONCLUSIONS: DODIG's overall conclusions are:

Finding A. Contractor Performance Included Inherently Governmental Functions and Posed Organizational Conflicts of Interest. Contracting officers at ACC-Warren and JPO MRAP senior managers (the officials) allowed the JLI support contractor to exert controls over functions that should have remained under the authority of DoD. The officials inappropriately allowed the contractor to direct DoD personnel, participate in disciplinary actions of DoD personnel, prepare and sign SOPs, and participate in other situations where contractor employees could be assumed to be DoD employees or representatives. In addition, the officials allowed the contractor to have organizational conflicts of interest, such as participating in the preparation of the requirements for the contract that was subsequently awarded to the contractor and monitoring its own performance. This occurred because the officials only cursorily addressed statutory and regulatory requirements for preventing performance of inherently governmental functions and organizational conflicts of interest, and only one Government employee was assigned overseas to the task of overseeing a multimillion dollar contract in three different foreign countries. As a result, the officials increased the risk for potential waste or abuse on the contract and did not ensure that the contract for JLI services, valued at \$285.5 million, was in the best interest of DoD.

Finding B. Use of Time-and-Materials Contract Type Should Be Limited. The contracting officer at ACC-Warren did not adequately support the need to use a T&M contract for the follow-on JLI effort, valued at \$285.5 million. Specifically, the Determination and Findings (D&F) did not adequately support the use of a T&M contract to procure services for the JLI follow-on effort when another contract option was available. This occurred because the contracting officer stated that she could not estimate the extent or duration of the work needed due to constant changes in mission need and work performed, even though 18 months of historical data from the initial JLI contract could have provided a basis for estimating the work. As a result, the contracting officer may have incurred unnecessary costs by using the riskiest contract type that provides no incentive to the contractor for cost control or labor efficiency.

ADDITIONAL FACTS:

In the first paragraph on page 4 of the draft report, beginning in the sixth line, the following statement is made:

In addition, the officials allowed the contractor to have organizational conflicts of interest, such as participating in the preparation of the requirements for the contract that was subsequently awarded to the contractor...

In this statement on page 4, the term "the officials" is defined to mean both "contracting officers at ACC-Warren" and "JPO MRAP senior managers."

A similar statement is made on page 9 of the draft report [first paragraph under heading "Contractor Performance Posed Organizational Conflicts of Interest"]: *"The officials allowed the contractor to have organizational conflicts of interest while performing JLI functions. First, the contractor provided input on the JLI requirements for the JLI 02 SOW while working as a subcontractor under the JLI 01 contract."*

The draft report elaborates on these statements on page 8, by referencing an audit team meeting on 7 Dec 2009 with the PCO and the contract specialist *"where the contracting specialist stated that the contractor and JPO MRAP officials worked together to prepare the contract requirements for the JLI 02 SOW and the contracting officer agreed."*

There obviously was a miscommunication at the 7 December 2009 meeting. Neither the contract specialist nor the contracting officer at that meeting remembers making, or agreeing with, a contention that the contractor had any hand whatsoever in preparing the contract requirements that were competed and awarded as JLI 02. The fact is that neither the contract specialist nor the contracting officer had knowledge of involvement by any contractor before award of JLI 02. The statement of work for JLI 02 was received from Government (PM MRAP) employees, and the buyer and PCO believed at the time, and still understand today, that the statement of work was completely a Government work product. The Government-only nature of the JLI 02 work statement was critically important at the time, because JLI 02 was solicited as a competitive action, and as the report suggests it would have been a clear OCI if a potential competing contractor had been involved in drafting any portion of the statement of work for the competitive acquisition. The buyer and contracting officer, then, did not "allow the contractor" to participate in development of requirements for the competitive JLI 02 solicitation. Nor was this allowed by JPO MRAP senior officials.

The miscommunication at the referenced 7 Dec 09 meeting seems to result from confusion between the statement of work for the JLI 02 BPA itself, and the statement of work for the first task order issued under the BPA. Although the buyer did not speak of contractor involvement in the development of requirements for the competitive BPA, he probably did speak of contractor involvement in the development of requirements for Task Order 0001—which was awarded after the BPA was in place, and for which contractor involvement fits with the first of the three exceptions at FAR 9.505-2(b)(1), where the contractor in question "is the sole source." Since JLI 02 was issued as the sole ordering instrument for JLI-type services, this FAR exception applied in the case of

the statement of work for task order 0001, since the task order was executed under the BPA after the BPA was awarded, and was not issued as a competitive acquisition.

On page 12 of the draft report, the bottom paragraph states, in part, that *"the contracting officer did not assess the SOW for the JLI 02 contract to identify whether an actual or potential organizational conflict of interest existed before contract award [...]. The contracting officer left the responsibility of assessing organization conflict of interest to the contractor."*

The draft report elaborates on these statements on page 13 by stating that *"the contracting officer could provide only the contractor's assessment of organizational conflicts of interest as support for an organizational conflict of interest assessment. Further, during a meeting with the ACC-Warren Chief of Armaments Contracting Group, contracting officer and contracting specialist on December 7, 2009, the contracting officer stated that ACC-Warren officials did not assess the JLI 02 contract for organizational conflicts of interest."*

Again, there apparently was a miscommunication at the 7 Dec 09 meeting. What the PCO remembers saying at the meeting is that her OCI review was not separately documented, not that she never considered OCI in her review of the proposed new acquisition. She did not document her OCI review because FAR specifically states that an OCI review must be documented only where a substantive potential OCI has been identified. Refer to FAR 9.504(d), particularly the last sentence.

The draft audit report appears to treat the absence of documentation of an OCI review as proof that no OCI review was done. This is not a justified inference when the FAR goes out of its way to instruct PCOs that their judgments concerning the presence or absence of OCI "...need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists."

In the third paragraph of section entitled "JLI 02 Contract" on page 21 of the draft report, the bottom line on the page includes the beginning of this sentence: *"ACC – Warren officials could have used historical data from the initial JLI effort to estimate the extent or duration of work required with a reasonable degree of confidence for the JLI follow-on effort."*

The fact is that the MRAP program at the close of JLI 01 was far from an established, steady-state program that could have allowed JLI 02 to be estimated and procured on a firm fixed-price basis. Consider the following facts, for instance, illustrating the substantial growth and evolution of the MRAP JLI effort after the conclusion of work on Task Order 0256:

Number of MRAP vehicles originally specified for Afghanistan: <500
Number of MRAP vehicles currently fielded in Afghanistan: >15,000

Number of Regional Support Activities (RSAs) originally specified for Afghanistan: 1
Number of RSAs currently operating in Afghanistan: 6, plus 3 fielding stations

Had we executed JLI 02 as an instrument permitting only firm fixed price task orders, the result likely would have been mission failure, and preventable loss of US lives.

In addition, while we do not forecast that the JLI manning requirements going forward from April 2011 will continue at the same growth rate as experienced heretofore, we anticipate the down slope will be as unpredictable and as bumpy as the growth path has been since 2009.

RECOMMENDATIONS:

Recommendation A.3. DODIG recommends the Executive Director, Army Contracting Command – Warren:

a. Require contracting officials to obtain training on inherently governmental functions and organizational conflict of interest requirements, as prescribed by Federal Acquisition Regulation.

Executive Director, Army Contracting Command – Warren: Concur. ACC-Warren will require contracting officials to obtain training on inherently governmental functions and organizational conflicts of interest requirements, described in the Federal Acquisition Regulation 7.503. Target completion date to have all contracting officers trained on both OCI and inherently governmental functions is 30 December 2011.

b. Perform a review of the contracting officers' performance related to procuring and administering the Joint Logistics Integrator services contract and initiate, as appropriate, any administrative actions warranted by the review.

Executive Director, Army Contracting Command – Warren: Concur. ACC-Warren will perform a review of the contracting officers' actions to review the potential for organizational conflict of interest (OCI) on procuring and administering the Joint Logistics Integrator services contracts and initiate, as appropriate, any actions warranted by the review. To ensure an impartial and thorough assessment, the review will be conducted by a management official from ACC – Warren outside the chain of command of the contracting officers in question. The review results will be presented to the PARC, who will determine any corrective actions that may be warranted. Target Completion date is 30 December 2011.

c. Issue guidance to instruct and remind all contracting officers of the requirements in the Federal Acquisition Regulation for identifying, evaluating, and resolving organizational conflicts of interest.

Executive Director, Army Contracting Command – Warren: Concur. ACC-Warren will issue guidance to instruct and remind all contracting officers of the requirements in the Federal Acquisition Regulation for identifying, evaluating, and resolving organizational conflicts of interest. Target Completion date is 30 December 2011.

d. Require contracting officials to review contract W56HZV-09-A-0003, delivery order 0001, to ensure that organizational conflicts of interest have been mitigated.

Executive Director, Army Contracting Command – Warren: Concur. ACC-Warren will require contracting officials to review contract number W56HZV-09-A-0003, Task Order 0001 and ensure that any identified organizational conflicts of interest are reviewed and effectively mitigated. Target Completion date is 30 December 2011.

Recommendation A.4. DODIG recommends that the TACOM Principal Assistant Responsible for Contracting perform a peer review on contract W56HZV-09-A-0003, delivery order 0001.

Executive Director, Army Contracting Command – Warren: Concur. ACC-Warren will perform a peer review on contract W56HZV-09-A-0003, Delivery Order 0001. Target Completion date is 30 December 2011.

Recommendation B. DODIG recommends that the Executive Director, Army Contracting Command-Warren, require contracting officials to establish a process that will gather and analyze data from the Joint Logistics Integrator contract, so that selected tasks can be converted to fixed price work.

Executive Director, Army Contracting Command – Warren: Concur. This recommendation applies equally to PM MRAP and ACC-Warren. Contracting officials will work with PM MRAP's Procurement Analyst to establish a process that will gather and analyze data from the Joint Logistics Integrator contract to determine if selected tasks can be converted to fixed price work. Target Completion date is 30 December 2011.



Inspector General Department of Defense